

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

CLERK'S OFFICE U.S. DIST. COURT
AT DANVILLE, VA
FILED for
RJG

APR 09 2007

JOHN F. CORCORAN, CLERK
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FAHED TAWALBEH,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

Civil Action No. 7:07CV00145

MEMORANDUM OPINION

By: Hon. Jackson L. Kiser
Senior United States District Judge

Petitioner, Fahed Tawalbeh, a federal inmate proceeding pro se, has submitted to the court a motion to vacate, set aside or correct his sentence pursuant to 28 U.S.C. § 2255.¹ Upon review of the record, I conclude that the action must be dismissed as successive. To the extent that Tawalbeh wishes to raise this as a motion to reduce his sentence pursuant to 18 U.S.C. § 3582(c)(2), the court will file this as a motion in his criminal case - 7:97CR00024.

I.

Tawalbeh challenges his 431 month sentence for offenses arising out of the burning of a competitor's store with a "Molotov Cocktail." Court records indicate that Tawalbeh has previously filed a § 2255 motion, Civil Action No. 7:00CV00858 (W.D. Va.), regarding the same conviction and/or sentence. This court may consider a second or successive § 2255 motion only upon specific certification from the United States Court of Appeals for the Fourth Circuit that the claims in the motion meet certain criteria. See § 2255 ¶ 8. As Tawalbeh has not submitted any evidence of having obtained certification from the Court of Appeals to file a second or successive §2255 motion,

¹ Although Tawalbeh titled his motion a "motion to modify sentence pursuant to Title 28 USC § 3582(c)(2)," the court believes that it is most appropriately construed as a motion pursuant to § 2255 because Tawalbeh is challenging his federal conviction and sentence.

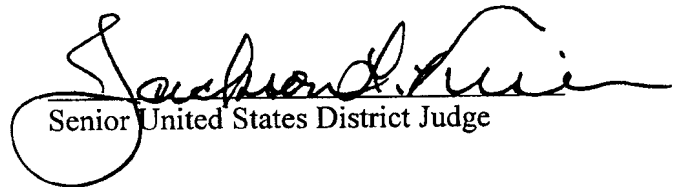
I must dismiss his petition as successive.²

II.

For the reasons stated, I hereby deny Tawalbeh's motion and dismiss it as a successive § 2255 petition. To the extent that Tawalbeh wishes to raise this as a motion to reduce his sentence pursuant to 18 U.S.C. § 3582(c)(2), the court will file this as a motion in his criminal case - 7:97CR00024.

The Clerk is directed to send certified copies of this Memorandum Opinion and the accompanying Order to all parties.

ENTER: This 9th day of April, 2007.


Senior United States District Judge

² Petitioner is hereby advised of the procedure for obtaining certification from the United States Court of Appeals for the Fourth Circuit to have this court review a successive § 2255 motion. Petitioner must submit a copy of the successive § 2255 motion to the Court of Appeals, along with a motion requesting a three-judge panel certification that the district court may review the successive § 2255 motion. See 28 U.S.C. § 2244 (as amended, 1996). A Fourth Circuit form and instructions for filing this motion will be included with this notice or are available from the Fourth Circuit at the following address: Office of the Clerk, United States Court of Appeals for the Fourth Circuit, 900 E. Main St., Richmond, VA 23219.